Opinion No. 47-4978

January 17, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. V. Gallegos, Assistant District Attorney 9th Judicial District, Tucumcari, New Mexico

*{*6}* We wish to acknowledge receipt of your inquiry of the 13th instant in regard to whether or not Sec. 41-1005 of the New Mexico 1941 Compilation has been superseded or repealed by the laws of 1939, as amended.

Although Sec. 61-1012 of the N.M. 1941 Compliation, as amended, permits minors to buy, receive or to be served alcoholic liquors when accompanied by his parent, guardian, spouse or an adult person into whose custody he has been committed for the time by some court, it is my opinion Sec. 41-1005 of the 1941 N.M. Compilation was not superseded or repealed by implication, insofar as prohibiting any minor under the age of twenty-one years from loitering or frequenting the premises belonging to a saloon.

The aforementioned, however, *{*7}* does not prevent a person under twenty-one years of age from occasionally entering cafes, night clubs, drug-stores or other premises where alcoholic liquors are sold and served.

According to Vol. 25, Words and Phrases, at page 589, the word "loiter" means to be dilatory, to stand around, to spend time idly. (See State v. Badda, 125 S. E. 159; 97 W. Va. 417).

In State v. Tobin, 96 A. 312, 313; 90 Conn. 58, the court held loitering to mean, "to delay; to linger; * * * to spend time idly; and so, in a prosecution for allowing women to loiter in a place where intoxicants were sold, a charge that loitering means to be dilatory, to stand idly around, and that it was for the jury to say whether women going into accused's place and remaining there for a length of time, were spending their time idling or not, was proper.

It was held in Green v. State, 9 N. E. 781; 109 Ind. 175, where the interpretation of a statute making the act of frequenting a gambling house criminal, was involved, that "frequenting" means something akin to or in the nature of a habit of going to such place and that evidence of a single or occasional visit was not sufficient to sustain a conviction.

In State v. Ah San, 13 P. 303, 304; 14 Ore. 347, where a statute was involved making it unlawful for any person to frequent an opium den for the purpose of smoking opium, etc., the court held that the word "frequent" undoubtedly requires more than one visit to constitute the offense -- how many, the court cannot, as a matter of law, determine.

In determining whether or not a minor is loitering or frequenting the premises belonging to a saloon, becomes a question of fact to be determined by the circumstances of each case.

Trusting the aforementioned satisfied your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General